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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 773

LEVERT H. TAYLOR, HAROLD L. BETHUNE, DELORES McGINNIE, MARIE McGINNIE, DAVID JAMES DENNIS and HARRY BLAKE,

Petitioners,

v.

STATE OF LOUISIANA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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LEVERT H. TAYLOR, HAROLD L. BETHUNE, DELORES McGINNIE, MARIE McGINNIE, DAVID JAMES DENNIS and HARRY BLAKE,

Petitioners,

v.

STATE OF LOUISIANA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

Petitioners respectfully pray that a writ of certiorari issue to review the decree of the Supreme Court of the State of Louisiana entered in the above-entitled cause on October 11, 1961 which denied petitioners' Application for Writs of Mandamus, Certiorari and Prohibition, thus affirming the verdicts of conviction rendered by the First Judicial District Court of Caddo Parish, Louisiana (herein called the District Court), on August 21, 1961, and entered on August 23, 1961.

OPINIONS BELOW

The District Court rendered no written opinion. Its oral opinion is part of the Record (R. 37-38), and is printed

in Appendix B hereto, *infra*, pp. 17-18. The memorandum opinion of the Louisiana Supreme Court is unreported and appears in Appendix B hereto, *infra*, p. 19.

JURISDICTION

The verdict of the District Court was rendered on August 21, 1961, and entered on August 23, 1961. Petitioners' motions for a new trial and in arrest of judgment were overruled and sentences were imposed on the latter date. Petitioners' Application to the Supreme Court of the State of Louisiana for Writs of Mandamus, Certiorari and Prohibition was denied on October 11, 1961. Petitioners thereafter on October 26, 1961 filed application for rehearing and on November 6, 1961, the Louisiana Supreme Court refused to consider the said application.

On January 8, 1962, Mr. Justice Hugo L. Black extended the time for filing this petition to and including March 10, 1962. The jurisdiction of this Court is based on 28 U. S. C. §1257(3).

QUESTIONS PRESENTED

The petitioners were convicted of disturbing the peace although there was a total absence of evidence of any misconduct on their part. Their convictions were based upon a holding by the trial court that the mere presence of Negroes in a waiting room customarily reserved for white persons in a Shreveport, Louisiana bus station, is sufficient evidence of intent to breach the peace.

The Federal questions are:

1. Whether the convictions of petitioners, unsupported by any evidence of guilt, constitute wholly arbitrary official action and thereby violate the due process clause of the Fourteenth Amendment?

2. Whether the imposition of criminal penalties so as to limit the right of Negro passengers to free and unimpeded interstate travel violates the Interstate Commerce Act, and the due process clause of the Fourteenth Amendment?

3. Whether the convictions of petitioners, because they were *Negroes* in a "white" waiting room, is classification by race in violation of the equal protection clause of the Fourteenth Amendment?

4. Whether a state may so employ breach of peace statutes as to perpetuate racial discrimination, otherwise held violative of the 14th Amendment?

STATUTES INVOLVED

Petitioners were convicted of disturbing the peace under §14:103.1 of the Revised Statutes of Louisiana, printed in Appendix A, *infra*, p. 15.

STATEMENT[1]

The petitioners were arrested on August 4, 1961. On that morning petitioners went by automobile to the Continental Trailways Bus Station in Shreveport, Louisiana. Continental Trailways is an interstate bus carrier. Petitioners David James Dennis and Harry Blake remained in the automobile; neither Dennis nor Blake entered the bus station at any time on that morning (T. 14, 45, 138). The other four petitioners went into the bus station waiting room customarily reserved for white people. All of the petitioners are Negro. Several police officers were present in the bus station at the time the four petitioners entered, including the Chief of Police (T. 127). Testimony indicated that anonymous phone calls had warned of trouble to be expected at the station (T. 17).

The Chief of Police of the City of Shreveport, Harvey D. Teasley, approached the four petitioners and asked them why they were in the station. The petitioners stated that they were waiting for a bus to Jackson, Mississippi, and wanted travel information. The Chief of Police directed them to the information counter in the other waiting room, designated as the colored waiting room. Upon their failure to go to the colored waiting room, Chief Teasley ordered them to leave or be arrested. The four petitioners did not leave and were arrested (T. 180-192, 229-231).

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[1] References to the Record are designated by the symbol "R". Although a transcript of the trial was made by an official court stenographer, in accordance with Louisiana practice it was not part of the Record before the Louisiana Supreme Court. To supplement the Record the transcript is submitted with this petition and references to it are designated by the symbol "T".

There was no evidence of any misconduct on the part of petitioners. The prosecution offered evidence in an effort to show that when the four Negroes walked into the station, people became restless and some onlookers climbed onto seats (T. 76, 79, 89, 123). There was no evidence of violence or disorder. Police testimony consistently was the same; petitioners were quiet, orderly and polite (T. 21, 22, 47, 57).

Petitioners Blake and Dennis were arrested about two blocks away from the bus station and all testimony showed that they had not been in the bus station on that day (T. 38, 42, 44).

No one else was arrested, and so far as appears, none of the other occupants of the station was interrogated.

Petitioners were charged with disturbing the peace. The Bill of Information (R. 21) alleged that they did "with intent to provoke a breach of the peace, and under circumstances such that a breach of the peace might be occasioned thereby, crowd and congregate with others in a public place, to wit, inside the . . . Bus Station . . . and did fail and refuse to disperse and move on when ordered to do so by a law enforcement officer . . .."

Petitioners' motion for a bill of particulars was denied. The said motion had sought to require the setting forth of sufficient detail of the charged offense so as to permit petitioners to prepare a defense. Basically, the motion asked that petitioners be advised of the manner in which they were alleged to have congregated or crowded and as to the specific breach of the peace that could have been reasonably occasioned as a result of their acts (R. 27-29). The Trial Court denied the motion stating that the "bill

of information gave all of the particulars pertinent to the charge against them" (R. 16).

Petitioners thereafter filed a motion to quash and sought leave to adduce evidence in support of the motion which the Trial Court denied (R. 30-31).

The petitioners were then, on August 11, 1961, arraigned and each pleaded "not guilty." Following the trial before Judge John A. Dixon, Jr., petitioners moved for a directed verdict as to the petitioners, David James Dennis and Harry Blake, upon the ground that there had been no evidence adduced which indicated that either of the said two petitioners had been present in the bus station at the time the alleged incident took place, and that they had been charged as principals, the motion was denied (T. 203).

A further motion for directed verdict as to all petitioners was denied. The Court in denying the said motion made the following statement:

> "The motion for a directed verdict is overruled. I believe the State has shown a prima facie case. Even a person so far removed from this scene as United States Attorney General Kennedy recognizes that when colored people go into a white waiting room in a place like Shreveport, they have committed an act that is calculated to disturb and alarm the public." (R. 37)

The Court thereupon found all of the petitioners guilty. A motion for a new trial was made (R. 40) and denied and sentences were imposed upon petitioners.

The Court in imposing sentence, made the following statement (T. 251-252):

> ". . . these sentences are going to be imposed as I think the prosecution has been motivated, and the arrest has been motivated, not because of what you think or the fact that your beliefs are different from the beliefs of white people generally in this area, and that, although you certainly cannot separate this case from the segregation problem, these sentences are motivated, I think, by a desire on the part of the Court to do what it can to maintain the relatively harmonious relationships in this community that have existed in the past between the races and to prevent incidents in Shreveport that can have hardly any other conclusion except the destruction of the relatively harmonious relationships that have existed here."

Levert Taylor was sentenced to pay a fine of $150.00 and costs or, in default thereof, to serve 30 days in jail, and to serve 30 days in jail; Delores McGinnie and Marie McGinnie were sentenced to pay a fine of $150.00 and costs or, in default thereof, to serve 30 days in jail, and to serve 15 days in jail. The Court ordered that the 15 days in jail be suspended upon good behavior. Harold L. Bethune was sentenced to pay a fine of $200.00 and costs or, in default thereof, to serve 45 days in jail, and to serve 3 months in jail.

Although the petitioners Dennis and Blake were proven not to have been in the station, they were convicted "as principals" and the heaviest sentences imposed upon them. Dennis was sentenced to pay a fine of $200.00 and costs or, in default thereof, to serve 45 days in jail, and to serve 3 months in jail; and Blake was sentenced to pay a fine of $200.00 and costs or, in default thereof, to serve 45 days in jail, and to serve 30 days in jail.

The petitioners sought review of the judgments of conviction and sentences by the Louisiana State Supreme Court. Under Louisiana law no appeal procedure was available, since no sentence was for longer than 6 months and no fine over $300.00. Review was sought, however, under the general supervisory jurisdiction of the Supreme Court.[2] The Louisiana Supreme Court held that the showing made by petitioners did not justify the exercise of supervisory jurisdiction.

HOW FEDERAL QUESTIONS WERE RAISED

The Federal questions here presented were specifically raised in the District Court by written motion to quash prior to arraignment of petitioners (R. 30, 31), by oral motions for directed verdicts, again by written motion in arrest of judgment (R. 33, 34), and still again by written motion for a new trial (R. 40, 41). Each of the said motions was overruled; the denial of the motion to quash was accompanied by a written opinion (R. 19, 20), and the denial of the motion for a directed verdict by an oral opinion (R. 37). The written motions and opinions referred to herein appear in Appendix B, *infra* pp. 20-33. In petitioners' application to the Louisiana State Supreme Court for Writs of Mandamus, Certiorari and Prohibition, specific reference was again made to the Federal questions sought to be reviewed (R. 9-14).

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[2] Article VII Sec. 10, Louisiana Constitution, provides for the general supervisory jurisdiction of the Supreme Court over all inferior courts. No appeal is available in criminal cases unless a sentence of more than 6 months or a fine of more than $300.00 has been imposed by the lower court.

Petitioners' Federal claims were thus made at the earliest opportunity and were renewed at each stage of the proceeding below.

REASONS FOR GRANTING THE WRIT

As a preliminary matter it must be stated again that the convictions were based on no evidence whatsoever beyond the presence of four of the petitioners in a white waiting room. That the two petitioners, Dennis and Blake, were not even present in the station was conceded by the State (T. 34-35). All of the State's witnesses testified to the fact that petitioners were orderly, polite and spoke only to one another or to the police officers. Whatever fragmentary testimony there was of disorder concerned the conduct of persons in the station other than petitioners. Even under the broad and vaguely worded legislative prohibition against disturbing the peace, there was not a shadow of evidence that could have justified the convictions, either of the four who were at the station, or of the two who according to the prosecution aided and abetted them.

It was not disturbing the peace for petitioners to wait for a bus in the Continental Trailways Bus Station. It was not disturbing the peace for the petitioners to seek travel information in the "white" waiting room of the bus station. It was not disturbing the peace for petitioners to politely advise the police of their unwillingness to move into the waiting room reserved for Negroes.

Nor can evidence as to the membership in or participation by petitioners in the efforts of the Congress of Racial

Equality, an organization devoted to the testing and elimination of segregation in interstate travel, without more, constitute proof of intent to disturb the peace (T. 156, 160, 165).

The convictions here suggest that Negroes cannot wait for a bus in a public bus station without the jeopardy of arrest. They also suggest that Negroes so arrested are stripped of the presumption of innocence, and although they prove beyond any doubt that the charges against them are unwarranted, they will nevertheless be found guilty. Thus, the decisions of the District Court, buttressed by the Louisiana Supreme Court's refusal to review, are not simply rulings that petitioners must pay fines or serve jail sentences; they are virtually a warning to all Negroes in the State of Louisiana that they exercise their constitutional rights to travel and assemble upon pain of criminal punishment if their acts conflict with the mores of their local community.

This petition is therefore based on more than the fact that the convictions were unsupported by evidence. It is based also on the manifest purpose of these convictions, that of preserving racial segregation under the pretense of preserving the peace. The reasons why the writ should be granted are stated below.

CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT

Free and unimpeded travel has been held to be a natural, or constitutionally protected right. *Kent* v. *Dulles*, 357 U. S. 116 (1958); *Edwards* v. *California*, 314 U. S. 160, 172 (1941). The right of interstate bus travellers not to be subjected to discrimination and segregation is well and long established. *Morgan* v. *Virginia*, 328 U. S. 373 (1946); *Henderson* v. *United States*, 339 U. S. 816 (1950); *Mitchell* v. *United States*, 313 U. S. 80, 97 (1941); *Boynton* v. *Virginia*, 364 U. S. 454 (1960); *Gayle* v. *Browder*, 352 U. S. 903; *Bailey* v. *Patterson*, — U. S. —, Feb. 26, 1962.

Interference with these rights is not only proscribed by the due process and equal protection clauses of the Constitution, but also violates Article 1, Sec. 8, of the Constitution of the United States and the laws of Congress and the regulations of the Interstate Commerce Commission passed and adoped pursuant thereto. 49 U. S. C. 316(d); 49 U. S. C. 3(1); 49 U. S. C. 1374, *Mitchell* v. *U. S.*, and *Henderson* v. *U. S.*, both *supra*.

That the existence of a Federal right necessarily implies a federally protected immunity against harassment, reprisal or punishment for the exercise of that right is too well settled for argument. *McCulloch* v. *Maryland*, 4 Wheat 316 (1819); *Johnson* v. *Maryland*, 254 U. S. 51 (1920), and cases there cited; *N. A. A. C. P.* v. *Alabama, ex rel. Patterson*, 357 U. S. 449 (1958).

The question then is whether the exercise of a right may be limited because it is expected to arouse violence in others.

The law on this issue is settled. Those who exercise constitutionally protected rights can neither be punished nor stopped unless they, themselves, are guilty of affirmative acts of wrongdoing. *Cooper* v. *Aaron*, 358 U. S. 1 (1958); *Sellers* v. *Johnson*, 163 F. 2d 877 (C. A. 8, 1947) *cert. denied* 332 U. S. 851; *Rockwell* v. *Morris*, 10 N. Y. 2d, 749, *cert. denied* 368 U. S. 913 (1962)

If the right involved here was not that of travel, but examined only in the context of the testing of legislation by peaceful assembly or demonstration, the law is equally clear. Such rights are protected by the 1st Amendment. See, *e.g.*, *De Jonge* v. *Oregon*, 299 U. S. 353 (1937); *Cantwell* v. *Connecticut*, 310 U. S. 296, 306 (1940).

IMPORTANCE OF THE FEDERAL QUESTIONS

From the earliest Court interpretations of the Fourteenth Amendment to the present, there has been a consistent adherence to the view that it prohibits discrimination by the States. *Strauder* v. *West Virginia*, 100 U. S. 303 (1880). The law is clear that such discrimination is equally repugnant whether it takes the form of legislation or unequal administration of the law by public authority. As this Court said in *Yick Wo* v. *Hopkins*, 118 U. S. 356 (1886):

> "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justices is still within the prohibition of the Constitution . . ."

The basic question here, however, is whether a State may, under cloak of protecting against breach of the peace or guarding the public safety, practice such discrimination. The power of the police to effect summary arrests where breach of peace appears imminent is not questioned. There must, however, be safeguards against the use of such power to enforce discriminatory State policies which are not acceptable in the form of legislative or administrative acts. Where a State affirmatively sanctions police incursion into the area of protected activity, it is running counter to the guarantees of the Fourteenth Amendment. Such summary official action must be restrained. *Garner* v. *Louisiana*, 368 U. S. 157, and see *Thompson* v. *City of Louisville*, 362 U. S. 199.

The denial of due process by the arrests here is evident. White persons would not be and were not arrested for their presence in the same place at the time time. Nor were they arrested for their acts, since the only evidence of any disorder was as to others in the station. Neither can it be said that the trial of petitioners satisfied the due process requirements, their convictions being devoid of evidence to support them. Perhaps even more significantly, upon their trial they were stripped by the Court's declared attitude as quoted earlier, of the presumption of innocence. *Bailey* v. *Alabama*, 219 U. S. 219.

The gravity of the threat implicit here is plain. This is not an action involving a dispassionate effort on the part of the police to prevent persons who they consider dangerous to the peace from frequenting public places. This case involves a broad threat to all Negroes that the State of Louisiana will use the police power and the threat of criminal penalty to perpetuate practices outlawed by the Constitution and the laws of the United States.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Revised Statutes of the State of Louisiana

14:103.1. DISTURBING THE PEACE.

A. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(1) crowds or congregates with others providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, in or upon a shore protection structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place or building, or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or parish, in which such act or acts are committed or by any law enforcement officer of the state of Louisiana, or any other authorized person or

(2) insults or makes rude or obscene remarks or gestures, or uses profane language, or physical acts, or indecent proposals to or toward another or others, or disturbs or obstructs or interferes with another or others, or

(3) while in or on any public bus, taxicab, boat, ferry or other water craft or other vehicle engaged in transporting members of the public for a fare or charge, causes a disturbance or does or says, respectively, any of the matters or things mentioned in subsection (2) supra, to, toward, or in the presence of any other passenger on said vehicle, or any person outside of said vehicle or in the process of boarding or departing from said vehicle, or any employee engaged in and about the operation of such vehicle, or

(4) refuses to leave the premises of another when requested so to do by any owner, lessee, or any employee thereof, shall be guilty of disturbing the peace.

B. Whoever commits the crime of disturbing the peace as defined herein shall be punished by a fine of not more than two hundred dollars, or imprisonment in the parish jail for not more than four months, or by both such fine and imprisonment.

Section 2. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or application and to this end the provisions of this Act are hereby declared severable.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

Section 4. The necessity for the immediate passage of this Act having been certified by the Governor to the Legislature while in session, in accordance with Section 27 of Article III of the Constitution of Louisiana, this Act shall become effective immediately upon approval by the Governor".

Approved by Gov.: June 22, 1960.

APPENDIX B

Opinion of First Judicial Court of Caddo Parish

No. 57,562

STATE OF LOUISIANA VS. LEVERT H. TAYLOR, DELORES McGINNIE, MARIE McGINNIE, HAROLD L. BETHUNE, DAVID JAMES DENNIS and HARRY BLAKE	In the First Judicial District Court, Criminal Section, Parish of Caddo, State of Louisiana

The Court: There is not a person in this court room who does not know that if white persons go into the colored waiting room in Shreveport or if colored persons go into the white waiting room at the bus station in Shreveport that a breach of the peace is likely and eminent and probable.

The police department and sheriff's department of this city and state are to be commended for taking prompt action. Other police and other cities and towns have been highly criticized in many places for failing to take action when such an incident as this was about to occur.

In this case the attempt, I think, to create a disturbance was planned and deliberate. Evidence uncontradicted shows that there were meetings at which these defendants perhaps with others planned this excursion, and that one of the defendants, Dennis, called the police and alerted them. He could have only had one of two purposes, or maybe both, for such a call. One was publicity, and the other was pro-

tection. He received the protection. I think the question here is not whether or not the police have the right or the authority to direct people who are doing something that is lawful to move on. The question here is purely whether or not these people congregated intending to provoke a breach of the peace, congregated with the intent to do something that was calculated to disturb the peace.

There is absoluely no question about it. The defense has admitted, or offered to admit from time to time that these colored people did go into the white waiting room at the bus station. The Court does not believe the testimony of Blake and Bethune when they say they did not know what was planned or what was about to happen or what was going to transpire.

I find Blake as a principal and we find all the defendants guilty.

• • •

Opinion of Louisiana Supreme Court

SUPREME COURT OF LOUISIANA
New Orleans

STATE OF LOUISIANA	October 11, 1961
v.	
LEVERT H. TAYLOR ET AL.	No. 45,841

In re: Levert H. Taylor et al applying for writs of mandamus, certiorari and prohibition

---

Writ refused. The showing made does not justify the exercise of our supervisory jurisdiction.

/s/ FWS
/s/ JBF
/s/ JBH
/s/ FWH
/s/ ElIMcC
/s/ WBH
/s/ JWS

• • •

Motion to Quash Bill of Information

STATE OF LOUISIANA versus LEVERT H. TAYLOR, DELORES MCGINNIE, MARIE MCGINNIE, HAROLD L. BETHUME, DAVID JAMES DENNIS and HARRY BLAKE	Number: 57,562 First Judicial District Court Caddo Parish, Louisiana

Now into court come LeVert H. Taylor, Delores McGinnie, Marie McGinnie, Harold L. Bethume, David James Dennis and Harry Blake, appearing herein through their undersigned counsel, and reserving all rights under any and all motions previously filed herein as well as the right to file additional motions including those normally filed to arraignment, and with respect, show:

1.

That the Bill of Information filed herein against them should be quashed for the following reasons, to wit:

1.

That the statute defining the offense with which your petitioners are charged herein should be quashed for lack of clarity in that the language of the statute lacks the clarity required by Article one Section ten of the Louisiana Constitution and the Sixth Amendment of the Constitution of the United States as it fixes no ascertainable standard of guilt that the defendants or would be defendants could be aware or appraised of prior to commission of the act or acts and prior to a determination by the courts, and particularly

in reference to the words "crowd and congregates with others."

2.

The statute violates the defendants' rights to peaceably assemble as guaranteed by the First Amendment of the Constitution of the United States and of Article one Section five of the Constitution of the state of Louisiana.

3.

The statute under which your petitioners are charged violates the equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that it exacts a penalty from these defendants not exacted from Labor Unions and other persons specifically exempted under the statute.

4.

The statute under which petitioners are charged violates the Due Process and Equal Protection clauses of the Fourteenth Amendment to the Constitution of the United States in that it has for its purpose furthering and maintaining the states policy of forced segregation in the state of Louisiana at the places designated in the statute, or in the alternative, and the alternative only it is being administered in a fashion so as to deny members of the Negro Race rights secured to them under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States by exacting of the criminal penalties for seeking to use facilities not specifically designated for members of their race.

5.

That in the alternative and in the alternative only this statute makes it possible to exact a penalty from these particular defendants merely because of their attempt to use facilities in interstate commerce in keeping with their rights under the Fourteenth Amendment to the Constitution of the United States and particularly the Equal Protection and Due Process Clauses thereof

WHEREFORE, PETITIONERS PRAY that this motion to Quash be sustained and that the Bill of Information filed herein against them be Quashed and that the charges be dismissed and that they be restored to their liberty forthwith and that they be relieved from further prosecution herein under the statute complained, and for all orders necessary and for general and equitable relief.

/s/ JESSE N. STONE, JR.
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854½ Texas Avenue
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Attorney for Petitioners

Opinion of Judge John J. O'Neal on Motion to Quash

STATE OF LOUISIANA v. LEVERT H. TAYLOR, ET AL.	Number: 57,562 First Judicial District Court Caddo Parish, Louisiana

The defendants in the above and entitled cause, being six in number, charged under R. S. 14:103.1 with disturbing the peace, filed a motion to quash the bill of information on five grounds, which motion has been argued and submitted.

(1) It is alleged that the statute defining the offense under which the defendants are charged should be quashed for lack of clarity, as the statute lacks the clarity required by the Federal and State constitutions, in that there is no standard to apprise the defendants what is prohibited, particularly in reference to the words "crowd and congregates with others."

We see no merit to this contention. Two or more make a "crowd." We think that when the statute prohibits a person congregating with others, etc., the words used are of common import, and such person can clearly understand same. Furthermore, the charge filed herein charges six persons with having "congregated."

(2) The second point is without merit as the statute does not prohibit persons from "peaceable assembly." The statute prohibits breaches of the peace as defined therein.

(3) The third ground of the motion to quash alleges that the defendants are denied the "equal protection"

clause of the 14th Amendment to the Constitution of the United States, for the reason that labor unions are exempted under the statute.

Labor unions are regulated by a different law and, as we understand the jurisprudence, reasonable exceptions may be made in a statute without rendering the statute unconstitutional.

(4) Defendants allege that the statute under which defendants are charged violates the "due process" and "equal protection" clauses of the 14th Amendment to the Constitution of the United States, in that it has for its purpose furthering and maintaining the State's policy of forced segregation in the state of Louisiana at the places designated in the statute; and in the alternative, that it is being administered in a fashion to deny members of the negro race rights accorded to them under the "equal protection" and "due process" clauses of the Constitution, by exacting of the (defendants) criminal penalties for seeking to use facilities not specifically designated for members of their race.

The statute applies to all persons, whether white or colored, and has no reference whatever to the segregation of the races. While the statute may be used to prosecute those who attempt to individually enforce desegregation or violate segregation statutes, it applies to white as well as to colored people and (so far as we recall) the statute applies to places not covered by any segregation statute. It prohibits persons congregating with others with the intent to provoke a breach of the peace . . . in or upon . . . a public street or public highway or upon a public sidewalk.

(5) The allegations contained in paragraph five are inapplicable to the present law, as the segregation statutes are not involved in this proceeding. The complaint in this section might be applicable to a statute providing for a segregation of the races if the defendants were charged with violating such law. The defendants are not charged with violating the segregation laws. They are charged with disturbing the peace. A person may have the legal right to go to his church or walk upon the streets, but he cannot do it if he breaches the peace in so doing.

Under the terms of the statute, if six white persons did the same thing that these six defendants were charged with having done, they would be subject to prosecution for the same offense.

For the reasons assigned the motion to quash is overruled.

/s/ JOHN J. O'NEAL
District Judge

(Seal)

Motion in Arrest of Judgment

STATE OF LOUISIANA versus LEVERT H. TAYLOR, DELORES McGINNIE, MARIE McGINNIE, HAROLD L. BETHUME, DAVID JAMES DENNIS and HARRY BLAKE	Number: 57,562 First Judicial District Court Caddo Parish, Louisiana

Now into Court, through their undersigned counsel, come all of the defendants herein, reserving all rights under any and all motions and/or exceptions and under all Bills of Exceptions previously reserved, and with respect moves the court to arrest, nullify and set aside the judgment rendered herein against them for the following reasons patent upon the face of the record, to wit:

1.

That the statute under which these defendants are charged and the Bill of Information charging them in this cause were both so vague and indefinite that the defendants were not sufficiently apprised of the charges against them, and hence could not adequately prepare their defense, and that despite the fact that they filed a Motion for a Bill of Particulars in which they sought the necessary information, the same was refused, and hence the defects complained of were not cured.

3.

That the statute itself is patently defective in that it lacks sufficient clarity so as to apprise an offender or a would be offender of the specific act or acts that would constitute the crime or offense set forth in the statute.

4.

That the statute and the Bill of Information used words susceptible of various and sundry meaning and therefore were not sufficiently clear so that guilt could be ascertainable by an offender or a would be offender, and here your petitioners make particular reference to the words crowded and congregated.

5.

That in reference to all of the above and foregoing your petitioners, the defendants in this cause, show that the statute and the affidavit are therefore in violation of Article One Section Ten of the Constitution of the state of Louisiana and the Sixth Amendment to the Constitution of the United States.

6.

That there are statements patent upon the record of this cause made by this Honorable Court in connection with the rendition of its judgment to the effect that when colored people go into a white waiting room in a place like Shreveport, Louisiana, they have committed an act that is calculated to disturb and alarm the public.

7.

That the statement by this court to the effect set forth in the previous paragraph shows that this court found as a matter of fact that these defendants went into a white waiting room and thereby breached the peace, or caused a breach of the peace by their mere presence and for the court to so find is recognition by this court of, and is giving sanction to a policy of separation of races in public facilities under state law, under color thereof or in accordance with local custom and tradition, all in violation of the Equal

Protection and Due Process clauses of the Fourteenth Amendment to the Constitution of the United States.

8.

That in support of this Motion in Arrest of Judgment your petitioners wish to file herein a transcript of the ruling of this court both in connection with the defendants motion for a directed verdict and in connection with the findings of the court in reference to the defendant's guilt or innocence in this cause and that the same is annexed hereto and made part hereof, and which transcript shows that the ruling of the court on the question of guilt and in which the court made the statements aforesaid was timely excepted

WHEREFORE, YOUR PETITIONERS PRAY that their Motion in Arrest of Judgment be sustained as to each of these defendants and that all of the proceedings under the above and foregoing statute and/or Bill of Information be nullified and that further proceedings be suspended and PETITIONERS FURTHER PRAY in the alternative and in the alternative only that if for any reason this court should find this motion in arrest of judgment should not be sustained as to all of them, which is denied by all of your petitioners, then, and in such event, your petitioners pray that it be sustained as to such party or parties as the court shall deem entitled to such relief, and for all orders necessary and for general and equitable relief.

s/ JESSE N. STONE, JR.
Jesse N. Stone, Jr.
Attorney for Petitioners,
Defendants in this cause
854½ Texas Avenue
Shreveport, Louisiana

CERTIFICATE

I, Jesse N. Stone, Jr., do hereby certify that this Motion in Arrest of Judgment is filed in good faith, and is in my personal opinion, well grounded in law and in fact, and that the same is not filed for mere purpose of delay.

I further certify that a copy of the above and foregoing motion has been served on Honorable John A. Richardson, District Attorney in and for Caddo Parish, Louisiana.

DONE AND SIGNED THIS 23RD DAY OF AUGUST, A. D. 1961.

/s/ JESSE N. STONE, JR.
JESSE N. STONE, JR.

(Seal)

Motion for a New Trial

STATE OF LOUISIANA versus LEVERT H. TAYLOR, ET AL.	Number: 57,562 First Judicial District Court Caddo Parish, Louisiana

The defendants, LeVert H. Taylor. Delores McGinnie, Marie McGinnie, Harold L. Bethume, David James Dennis and Harry Blake, reserving all rights under any and all motions and/or exceptions previously filed herein, move the Court for a new trial herein for the following reasons, to wit:

1.

That as can be seen from the Bill of Information filed herein, and the ruling of the court in reference to the Bill of Particulars filed herein by these defendants David Dennis and Harry Blake had no way of knowing that testimony would be offered by the prosecution to show that they in any way aided and abetted the remainder of your defendants in their alleged unlawful acts.

2.

That David James Dennis and Harry Blake, along with the other defendants sought by Motion for a Bill of Particulars to ascertain the manner in which they allegedly violated the law and that the same was denied them.

3.

That David Dennis and Harry Blake were thus required to go to trial without knowing under what specific act or acts they were alleged to have committed in violation of the law.

4.

That the verdict of guilty rendered by this court as against all of the defendants is contrary to the law and the evidence, in that the evidence offered to the effect that the presence of four of these defendants in a white waiting room in Shreveport, Louisiana caused a Breach of the Peace, and the court's statements to the effect that the presence of colored people in a white waiting room in a place like Shreveport, Louisiana is an act calculated to disturb and alarm the public, present no legal basis to support a verdict of guilty, in that such evidence and findings by the court presuppose that the defendants had no lawful right to act in the manner that they did, and that this is contrary to the law of the state of Louisiana of the United States, and particularly the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

5.

That the verdict is against the law and the evidence particularly as the same applies to Delores McGinnie, Marie McGinnie, LeVert Taylor, David James Dennis and Harry Blake for the reason that the evidence does not show that any statement by any police officer was ever made to either of them that could be calculated to have been an order for them to move on or to disperse.

6.

That the evidence is without contradiction.

7.

That the Chief of Police of Shreveport, Louisiana directed his remarks and his order to Harold Bethume.

WHEREFORE, PETITIONERS PRAY that this Motion for New Trial be sustained and that a new trial be ordered by this court and that the verdict be set aside, and for all orders necessary and for general and equitable relief.

/s/ JESSE N. STONE, JR.
Jesse N. Stone, Jr.
Attorney for Petitioners
854½ Texas Avenue
Shreveport, Louisiana

CERTIFICATE

I, Jesse N. Stone, Jr., do hereby certify that this Motion for New Trial is filed in good faith, and is in my personal opinion well grounded in law and in fact, and that the same is not filed for mere purposes of delay.

I further certify that a copy of the above and foregoing motion has been served on Honorable John A. Richardson, District Attorney in and for Caddo Parish, Louisiana.

DONE AND SIGNED THIS 23RD DAY OF AUGUST, A. D. 1961.

/s/ JESSE N. STONE, JR.
JESSE N. STONE, JR.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 773

LEVERT H. TAYLOR, HAROLD L. BETHUNE, DELORES McGINNIE, DAVID JAMES DENNIS AND HARRY BLAKE,

Petitioners,

versus

STATE OF LOUISIANA,

Respondent.

RESPONSE TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

Brief of the State of Louisiana to the Louisiana Supreme Court Filed in Support of Its Opposition to the Application to That Court by These Petitioners for Writ of Certiorari Is Attached as Appendix Hereof.

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No. 773

LEVERT H. TAYLOR, HAROLD L. BETHUNE, DELORES McGINNIE, DAVID JAMES DENNIS AND HARRY BLAKE,

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versus

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Brief of the State of Louisiana to the Louisiana Supreme Court Filed in Support of Its Opposition to the Application to That Court by These Petitioners for Writ of Certiorari Is Attached as Appendix Hereof.

May It Please the Court:

To the Honorable, the Chief Justice and the Honorable Associate Justices of the Supreme Court of the United States:

In compliance with your Honors' request as communicated by letter from Honorable John F. Davis, Clerk, dated April 16, 1962, we are pleased to submit below a response to the petition for a writ of certiorari to the Supreme Court of the State of Louisiana.

QUESTION PRESENTED.

These petitioners were convicted of violating the Revised Statutes of Louisiana of 1950, Title 14, Section 103.1 (R. S. 14:103; Criminal Code of La. Article 103.1), these petitioners having been charged in a bill of information in the First District Court of Louisiana with violation of Article 103.1 of the Louisiana Criminal Code (R. S. 14:103.1) in that they did, with intent to provoke a breach of the peace and under circumstances such that breach of the peace might have been occasioned thereby, crowd and congregate in a described public place and did fail and refuse to disperse and move on when ordered so to do by a law enforcement officer, namely, Harvey D. Teasley, Chief of Police, City of Shreveport, Louisiana.

FACTS OF THE CASE.

The facts of this case are as follows:

At approximately 4:00 A. M. on August 4, 1961, Captain Doyal, on night duty at the Shreveport Police Station, received a telephone call notifying the Police Department that there would be several people at the Shreveport Bus Station shortly after 5:00 A. M. to depart on a bus between 5:30 and 6:00 A. M., and requesting that there be "plenty of police officers" on hand. Captain Doyal immediately reported this to the Assistant Chief of Police (Major Giglio), who in turn notified the Chief of Police at the latter's home.

Shortly after that Captain Doyal received another phone call relative to the possibility of a disturbance and breach of the peace at the Trailways Bus Station. Captain Doyal likewise reported this to Giglio, but the latter

did not report the second call to Chief Teasley. (On the trial of this case it was proven that the first phone call was made by David Dennis, who did not identify himself by name but did identify himself as being president of the local chapter of CORE. Likewise, it was proven that Dennis informed the news media that there was going to be a disturbance at the bus station.)

On trial, Chief Teasley testified that while he did not receive notice of the second phone call, he did receive notice from a reliable source that there would be a disturbance and possible breach of the peace at the bus station on that morning, this source not being known to Doyal or Giglio. Therefore, there were actually three contacts made to the Chief of Police and Assistant Chief relative to anticipated trouble at the Trailways Bus Station on that morning.

The evidence showed that the defendants claimed that Bethune had earlier in the week given Dennis funds to buy Bethune's bus ticket, that Levert Taylor bought a bus ticket prior to August 4, that Dennis bought two tickets on Wednesday, August 2, and three tickets on Thursday, August 3, 1961. But when the six persons were arrested the only tickets found in their effects were four tickets in the possession of Bethune.

These defendants had had meetings on several occasions prior to August 4, relative to the purported planned bus "trip" (?) in this case, the last one being a conference between Dennis and Blake at Blake's home the day before. At the meeting at Blake's home, Blake agreed to assist Dennis in the matter. On the date in question they

all had agreed that Bethune would do all the talking for the group.

The evidence showed that on the morning of August 4 Bethune in his car picked up Levert Taylor and then went to the home of David Dennis. Dennis had made arrangement for Blake to bring his car in case they were able to get more people. Bethune, Dennis and Taylor, then in Bethune's car (with Dennis driving the vehicle), picked up the two McGinnie sisters and returned to the home of David Dennis. At that time Blake had arrived in his car. Blake left his car there at the home of Dennis and all six proceeded in Bethune's car to the bus station, with Dennis driving the car.

Meanwhile, in order to avert trouble and to prevent a breach of the peace, Major Giglio had pulled in a patrol car with two officers from the residential area, also a patrol wagon with one officer, and then proceeded to the bus station with a lieutenant from headquarters. There Major Giglio assigned those officers, himself, and a foot patrolman on the beat, to various places on the outside of the bus station.

The Caddo Sheriff's Department likewise stationed deputy sheriffs at various points on the outside of the bus station, as well as approximately four or five deputy sheriffs on the inside of the station. Chief Teasley arrived with Major Thomas and Major Richards and went into the inside of the station.

On the west side of the bus station are two entrances, one being plainly marked "Interstate Passengers"

and the other "Intrastate Passengers." The west side is also used for the unloading of passengers for incoming buses.

Shortly after City Police Officers Meacham and Guthrie were stationed on the west side, a bus arrived and a number of passengers disembarked, including soldiers and civilians, both white and colored persons. They began to crowd and congregate at the unloading area and **Officer Meacham ordered them to disperse and move on, which they did, and they were NOT arrested.** During that time, at the south side and east side of the bus station, **other officers ordered persons to disperse and move on, which they did, and they were NOT arrested.**

Dennis and Blake arrived in Bethune's car at the north end of the bus station by proceeding down an alley. They discharged the other four defendants and then sped away and were later seen a block away from the bus station, parked several feet from the curb, where they could look through adjoining parking lots and observe the activities around the bus station.

Bethune, Taylor and the two McGinnie sisters walked from the north end of the building; they walked past the door marked "Interstate Passengers," and when they reached Officer Meacham he learned from them that they were looking for the interstate entrance. He pointed out to them that they had just walked past the interstate entrance and directed them to that entrance. They insisted upon going through the "Intrastate Passengers" entrance, and he made no effort to stop them.

As soon as those four defendants entered the intrastate passenger room, many of the people therein became excited, restless and agitated. Almost all of them scattered about, some climbing over seats and some standing on seats. The four defendants proceeded on into the center of the room and congregated there.

Meanwhile, Officers Meacham, Guthrie and Dent (the foot patrolman on the beat) ordered various **other people to move on, which they did, and they were NOT arrested.** Among such persons were the people who had climbed up on the seats, those who were standing in the seats, those who had become excited in the restaurant (and adjoining room) and who had erupted into the intrastate passenger room, some colored porters on and near the stairs, and some young teen-age white boys who were crowded and congregated around a pinball machine.

When this was done, the **cafe patrons moved on back into the cafe and were NOT arrested.** The **colored porters moved on upstairs and elsewhere** about their business, **and they were NOT arrested.** The group of **white teen-age boys moved on out entirely from the building, and they were NOT arrested.** The other persons in that part of the bus station **moved on, as ordered, to other seats, or to the outside of the building,** so that there would be no further disturbance or breach of the peace, **and they were NOT arrested.**

When Chief of Police Harvey D. Teasley approached Bethune and his three companions, they told him that they were interstate passengers and wished to buy tickets. He then ordered them to move on to the

counter which serviced the interstate passengers. The four defendants refused to do so and then said they wished to get some schedule information. Chief Teasley told them that they could get the schedule information at the same ticket counter which serviced interstate passengers and ordered them again to move on to that location.

The four defendants then said that they were interstate passengers and had certain rights under Federal rulings and again refused to disperse and move on. Chief Teasley notified them that if they did not disperse and move on they would be in violation of City and State laws and that if they continued to refuse to obey his order they would be arrested.

Whereupon, Bethune, acting as spokesman for the group, said, "We have no choice; go ahead and arrest us." They never exhibited any of the tickets which Dennis and Taylor had previously bought.

They were then arrested and taken to jail. Blake and Dennis, still seated in Bethune's car parked away from the curb a block away from the bus station, were arrested. Being accessories before the fact, they were charged as principals pursuant to Article 24 of the Louisiana Criminal Code (R. S. 14:24), because they aided and abetted, counseled and procured the other four defendants to commit the crime charged.

The evidence on the trial showed that **all of the persons at the Trailways Bus Station that morning who were ordered to disperse or to move on did so with the**

sole exception of the four defendants on trial who went into the intrastate entrance. Those other persons who did disperse and move on and were **not** arrested included white persons, colored persons, soldiers, civilians, colored employees, restaurant patrons, passengers and non-passengers in the waiting room and on the east, west and south side of the bus station building.

The evidence also showed that about a month prior to this case two white people and two colored people, who were already interstate passengers, having come from Arkansas, went through the intrastate entrance, and when they were ordered to disperse and move on, **just exactly as in this case, they obeyed the officers' order and were NOT arrested.**

There was also considerable evidence showing that this statute has been used and officers had ordered people to disperse and move on, on many prior occasions, such as:

> On the sidewalk in front of H. L. Green Variety Store;
>
> At the Commercial National Bank corner;
>
> At the entrance to a billiard parlor known as the Subway;
>
> At certain buildings out on the State Fair Grounds where young white teen-age boys were often inclined to congregate;
>
> At various drive-in restaurants where young white teen-age boys occasionally congregated; and also around automobiles parked on the outside of certain restaurants.

In those cases this statute was used and **the persons, both white and colored, were ordered to move on, they did move on, and they were NOT arrested.**

On the trial of the case, the only evidence offered by the defense consisted of the testimony of the defendants, Bethune and Blake. The trial Court specifically held as unworthy of belief the testimony of Blake and Bethune, particularly when they said "they did not know what was planned or what was about to happen or what was going to transpire."

Dennis did not testify, although he was the one who drove Bethune's car, both in taking the other four persons to the bus station and also in parking it with Blake at a point a block away, where they could watch the activities. The trial judge held, in discussing **some** of the evidence:

> "In this case the attempt, I think, to create a disturbance was planned and deliberate. Evidence uncontradicted shows that there were meetings at which these defendants, perhaps with others, planned this excursion, and that one of the defendants, Dennis, called the police and alerted them. He could have only had one of two purposes, or maybe both, for such a call. One was publicity, and the other was protection. He received the protection."

In this connection, there was considerable doubt as to whether the four defendants really intended to make a bus "trip" at all. In reality their actions indicated an intention merely to provoke a breach of the peace,

cause a disturbance, and cause their own arrest. This is borne out by the following facts proved on the trial:

Dennis made telephone calls to the police and news media, whereas this is most unusual when a person is not contemplating trouble;

Among their effects Taylor had no funds (either cash or checks), Marie McGinnie had only $3.00 cash, Deloris McGinnie had only $5.00 cash, and Bethune had only $5.03, making a total of only $13.03 in funds for four passengers purporting to go to a distant city in another state;

There was no evidence that any of them had any relatives or other means of living accommodations available to them in the other state, even though Bethune was cross-examined at length on this score and was given every opportunity to make a showing in that regard;

If the four defendants had been sincere in their proclaimed intention of going to Mississippi, nothing took place which prevented their doing so EXCEPT their refusal to move on after being ordered at least three times to do so and after also being warned specifically that they would be arrested if they did not obey the order; and

Although their "proclaimed" destination was Jackson "their objective was trouble," as the trial Court so held.

MOTION TO QUASH DISCUSSED.

The motion to quash and argument thereof was based on the defendants' claim that:

(a) The statute allegedly lacks certainty and fixes no ascertainable standard of guilt as required by Article 1, Section 10, of the Louisiana Constitution and the Sixth Amendment to the U. S. Constitution.

(b) The statute allegedly violates the defendants' rights to peacefully assemble.

(c) The statute allegedly violates the equal protection clause of the Fourteenth Amendment to the Federal Constitution because it excludes labor unions.

(d) The statute allegedly violates the due process and equal protection clauses of the Fourteenth Amendment to the U. S. Constitution because it allegedly furthers and maintains forced segregation.

(e) Alternatively, the statute allegedly violates the equal protection and due process clauses of the Fourteenth Amendment to the U. S. Constitution in that the statute purportedly makes it possible to punish these defendants merely because of their alleged attempt to use "facilities" in interstate commerce.

MOTION TO QUASH FURTHER DISCUSSED.

In answer to the claims of the motion to quash, the State of Louisiana shows that the motion to quash was properly overruled by the trial Court for the following reasons, among others (all of which will be amplified and supported by authorities in the brief in support of this opposition, which brief is attached hereto and made a part hereof as Appendix A):

(a) The statute has several essential ingredients, such as:

"With the intent to provoke a breach of the peace";

"Under circumstances such that a breach of the peace might be occasioned thereby";

"Crowding or congregating with others," in certain specific designated and described public places, structures or buildings; AND

"Failing to disperse, or failing to move on, or failing to disperse and move on, when ordered so to do by certain specified officers of the locality in which the acts were committed."

The Louisiana Supreme Court has repeatedly held that the test to determine whether a statute or charge complies with Article 1, Section 10, of the Louisiana Constitution and the Sixth Amendment to the U. S. Constitution are:

(1) Whether it informs the accused of the nature and cause of the offense;

(2) Whether it is such that the Court may properly regulate evidence sought to being introduced; and

(3) Whether it is sufficient to support a plea of former jeopardy.

Judge O'Neal rendered a written opinion on the motion to quash (a copy of that opinion is attached hereto [see Appendix B] and made a part hereof inasmuch as it was not included in the defendants' copy of the application for writs served upon the district attorney and same should be made a part of the record in this cause).

In that opinion, Judge O'Neal specifically held, referring to the contention as to lack of clarity:

> "The words used are of common import, and such persons can clearly understand same."

(b) We know of no right of persons to "peacefully assemble" in a bus station with the intent to provoke a breach of the peace or under circumstances such that a breach of the peace may be occasioned thereby, particularly where, under the current statute all that they need to do to show that they do **not** intend to provoke a breach of the peace is to move on when ordered so to do by a peace officer.

While persons may have a right to peacefully assemble, when such purported assembly is not in a meeting place and, on the contrary, is out in the public, their right must not interfere with the other rights of the public and must yield to disturbing the peace statutes such as this one, duly enacted under the police power of the State in protection of the health, welfare and peace of the community.

(c) The claim set forth in the fourth paragraph in the motion to quash relating to "forced segregation" is nothing more than the customary claim for colored people when they wish to lay the groundwork to get into the United States Supreme Court. This claim is substantially answered in the following language from a Federal Court decision in *Brown v. The City of Wisner*, 122 F. Supp. 736:

> "Presented here, with complacent confidence, is one more of the frequent efforts, simply by waving the

> Constitution on high, to open the doors of Federal Courts for adjudication of purely local and private disputes. Widespread belief apparently prevails in some quarters that a sort of 'Open Sesame' is found in the Fourteenth and Fifteenth Amendments: that no matter how devoid of true constitutional issues or substantial Federal questions such cases may be, with those magic words they may call forth the full powers of the Federal judiciary in aid of claims for which they may have complete redress in State Courts, where they properly belong."

As Judge O'Neal ruled, "The statute applies to all persons whether white or colored and has no reference whatever to the segregation of the races" and in many instances "the statute applies to places not covered by any segregation statute."

(d) While they claimed to be desiring to buy tickets for interstate commerce, they already had tickets, according to their testimony; then they claimed they wanted schedule information, although Dennis had already, by telephone, informed the Police Department and the news media that these people would be leaving on a bus between 5:30 and 6:00 A. M.

In response to both of those statements, the Chief of Police ordered the group to move on to the counter servicing the interstate passengers. Moreover, in view of the phone calls by Dennis, and in view of the small amount of money in possession of the four defendants who entered the intrastate entrance and the lack of arrangements for rooming quarters at their purported des-

tination, their "status as interstate passengers is extremely doubtful."

If they claimed to be interstate passengers, their actions belied their claim, because, if they were such, there was no need for Dennis to telephone the Police Station and the news media and there was no need for Bethune, the spokesman for the four purported passengers, to make false statements to the Chief of Police.

Moreover, as Judge O'Neal ruled:

> "A person may have the legal right to go to his church or walk upon the streets, but he cannot do it if he breaches the peace in so doing.
>
> "Under the terms of the statute, if six white persons did the same thing that these six defendants are charged with having done, they would be subject to prosecution for the same offense."

(f) Additionally, the statute in question is identical with Section 2087.5, Mississippi Code, 1942, which has recently been ruled by a federal district judge:

> "A pure and simple peace law enacted by the Legislature in good faith to insure peace and tranquility among its people";
>
> Not "in anywise or to any extent involving either integration or segregation";
>
> "Applies alike to black and white citizens"; and
>
> "Is a perfectly natural and necessary exercise by the State of a well-known and well-recognized police power." (in spite of inflammatory criticism leveled at the statute).

(See *Elmer Brown v. State of Mississippi*, No. 3196-3200—Criminal, U. S. District Court, Southern District of Mississippi, opinion by Judge Harry Cox, filed August 26, 1961 (see Appendix C).)

Moreover, the statute in question is also practically identical with a 1923 statute of the State of New York which reads in part as follows:

> "Section 722. Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:
>
> "Congregates with others on a public street and refuses to move on when ordered by the police."

The New York statute has been held constitutional in the following cases:

People v. Nixon, 248 N. Y. 182, 161 N. E. 463, 466;

People v. Galpern, 259 N. Y. 279, 181 N. E. 572, 83 A. L. R. 785;

People v. Hipple, 263 N. Y. 242, 188 N. E. 725;

People v. Feiner, 300 N. Y. 391, 91 N. E. (2d) 316, and

Feiner v. New York, 340 U. S. 315, 95 L. Ed. 295, 71 S. Ct. 303.

In *Feiner v. New York*, *supra*, the United States Supreme Court said:

"Petitioner was afforded a full, fair trial. The trial judge heard testimony supporting and contradicting the judgment of the police officers that a clear danger of disorder was threatened. * * * The exercise of the police officers' proper discretionary power to prevent a breach of the peace was thus approved by the trial court and later by two courts on review. * * * there was no evidence which could lend color to a claim that the acts of the police were a cover for suppression of petitioner's views and opinions. Petitioner was thus neither arrested nor convicted for the making or the contents of his speech. Rather, it was the reaction which it actually engendered.

"The language of Cantwell v Connecticut, 310 U. S. 296, 84 L. Ed. 1213, 60 S. Ct. 900, 128 A. L. R. 1352 (1940) is appropriate here. 'The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others.'

"When clear and present danger or riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious. 310 U. S. at 308."

In truth and in fact, the statute under attack is (just as the New York statute is) a pure and simple disturbance and breach of the peace statute which vests authority in peace officers, when there is a clear and pres-

ent danger of disorder, excitement, riot or other breaches of the peace, to prevent such occurrence by ordering such persons to disperse or to move on (or both) as appears most likely to remove the present danger.

Likewise, it was not incumbent upon the officer to wait for a riot or other breach of the peace before taking steps to prevent it. See *People v. Nixon*, *supra*.

The following statement of the Court in *People v. Levner*, 30 N. Y. S. (2d) 487, is particularly applicable to this case and this statute:

> "Therefore, in spite of efforts to pose the question in the rarified constitutional atmosphere, it is apparent that this is merely a disorderly conduct case to be decided on its factual basis in conformity with the law of the State."

MOTION FOR DIRECTED VERDICT PRESENTED.

The defendants contend that, when the trial judge overruled the motion for a directed verdict at the close of the State's case in chief, Judge Dixon seemingly based his decision **solely** and entirely upon the single passing remark which he made **after** his ruling.

On the contrary, Judge Dixon made his formal ruling as follows:

> "The Motion for a Directed Verdict is overruled. I believe the State has shown a prima facie case."

That was the trial judge's actual ruling. Then followed a single statement relative to colored people going

into a white waiting room as being an act calculated to disturb and alarm the public. But that remark could not possibl be his **only** reason for finding facts proving a *prima facie* case.

For example, the judge did not mention any of these FACTS:

THE FACT that Dennis telephoned the city police, which caused an unusual number of City and State officers to be called out;

THE FACT that Dennis also telephoned the news media;

THE FACT that many persons became excited, restless and agitated;

THE FACT that many persons climbed over the seats and some stood on the seats;

THE FACT that all other persons (white and colored, soldiers and civilians, adults and teen-agers, passengers and nonpassengers) who were ordered to move on DID move on, with the SOLE EXCEPTION of the defendants on trial;

THE FACT that Bethune made a false statement concerning schedule when Dennis had already informed the police they were going to leave between 5:30 and 6:00 A. M.;

THE FACT that the defendants refused to obey at least **three** orders to move on;

THE FACT that Dennis and Blake drove rapidly away in Bethune's car and parked a block away, where they could observe activities;

THE FACT that Blake made false statements to Deputy Sheriffs Bryant and D'Artois denying that he had agreed the day before at his home to assist Dennis in this incident;

THE FACT that Blake made false statements to Deputy Sheriffs Bryant and D'Artois denying that he had brought his car to Dennis' home for use that morning if they could get other persons to join in;

THE FACT that Blake, although he testified, made no effort to explain or dispute the false statements by him described above;

NOR MANY OTHER FACTS which convinced the judge beyond a reasonable doubt that the State had made a *prima facie* case on the essential ingredients of the crime charged.

As shown above, there were many FACTS and factors that formed the basis of the trial judge's ruling, in addition to the single item mentioned by him in passing, which was surplusage, and which could not by any stretch of the imagination be the sole basis of his ruling.

DISTRICT JUDGE'S ORAL OPINION DISCUSSED.

What has just been said in the preceding numbered paragraph likewise applies to the defendants' contention concerning the judge's short oral opinion which he rendered in finding each of the accused guilty of the crime charged.

A trial court is not required to review all of the evidence and to give a complete index of all of the reasons

upon which he bases his decision in finding persons guilty. For example, he concluded his oral opinion by stating he found Blake to be a principal but did not positively state that he also found Dennis to be a principal. Yet he did find all of the defendants guilty.

Also, he named one particular in which he did not believe the testimony of Blake and Bethune to be truthful. But he did not elaborate on the fact that Blake himself acknowledged to Deputy Bryant and Deputy D'Artois that he had made false statements as set forth in the preceding numbered paragraph and, although Blake took the witness stand and testified, he never did explain or dispute the fact that he had so made false statements to those two officers.

Therefore, it cannot possibly be seriously contended that Judge Dixon based his decision that these defendants intended to provoke a breach of the peace (and were therefore guilty) on the **sole** ground that their presence was sufficient to show their intentions.

MOTION IN ARREST OF JUDGMENT AND MOTION FOR NEW TRIAL.

With reference to the motion in arrest of judgment and motion for a new trial, both of those motions merely reiterated the contentions that have already been thoroughly argued and passed on by the Court, some by Judge O'Neal and some by Judge Dixon. In those two motions the defendants now try to contend that Judge Dixon, in his oral remarks, was giving sanction to a policy of separation of races in public facilities under State law.

Suffice it to say, in this connection, this prosecution was for a "pure and simple" breach of the peace and did not involve any segregation or integration statute of the State of Louisiana.

MISCONDUCT OF DEFENDANTS.

For the defendants to claim in their application to the State Supreme Court that they were guilty of no misconduct, and sought passage in interstate commerce, simply constitutes begging the question.

In *State v. Mancini, 101 Atl. 581, 583 (Vt.)*, the Court said:

> "The question whether certain conduct constitutes a breach of the peace often depends largely upon the circumstances of the particular case. An act which would be lawful in some circumstances may amount to a breach of the peace if done in other circumstances. 8 R. C. L. 285."

Again, in *State v. Cooper*, 205 Minn. 333, 285 N. W. 903, 122 A. L. R. 727, 730, the Court stated:

> "That there was no outburst of violence was not due to his behavior, but to the fortunate circumstance that he was arrested and taken away before any trouble broke."

ELEMENTS OF DUE PROCESS PRESENT.

Relative to due process, the State shows the following elements are present in this case:

(1) A valid disturbance of the peace statute was enforced;

(2) It was enforced against all persons in and around the location involved without regard to race or color;

(3) There was a legal basis for the arrest;

(4) All defendants who refused to move on were warned that they would be arrested if they did not move on;

(5) Charges were filed and bail set promptly on the same morning;

(6) Prosecution in Court was by particularized bill of information;

(7) All defendants had counsel of their own choice who had ample opportunity to prepare their defense and to file and argue motions (which he did do);

(8) They were accorded a fair and impartial, speedy public trial;

(9) All defendants were given full opportunity to present evidence and to testify in their own behalf, but their entire defense consisted of the testimony of two of the defendants.

CONCLUSION.

As there is no substantial Federal question involved, and for the foregoing reasons, the petition for writ of certiorari should be denied as the proven facts demonstrate beyond a shadow of a doubt that these petitioners were guilty by their failure to obey the lawful orders of

the police under a lawful statute and they have shown they have no interest in the peace and tranquility of their community as a whole when balanced against their own desire to do as exactly as they saw fit.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

I, M. E. Culligan, Assistant Attorney General of the State of Louisiana, a member of the Bar of the Supreme Court of the United States, hereby certify that a copy of this response to the petition for writ of certiorari to the Supreme Court of Louisiana has been deposited in the United States mail, postage prepaid, addressed to the attorneys for the petitioners, namely, Jesse N. Stone, Jr., Esquire, Attorney at Law, Shreveport, La., and Carl Rachlin and Judith P. Vladeck, 280 Broadway, New York 7, New York.

M. E. CULLIGAN, Asst. Attorney Gen.
Member of the Bar of the Supreme Court
of the United States.

APPENDIX A.

STATE OF LOUISIANA	:	NUMBER 45,851
	:	SUPREME COURT
vs	:	STATE OF
LEVERT H. TAYLOR, ET AL.	:	LOUISIANA

BRIEF IN SUPPORT OF STATE'S OPPOSITION TO THE APPLICATION FOR SUPERVISORY WRITS

STATEMENT OF THE CASE

Inasmuch as the facts of this case have been set forth in detail in Paragraph 2 of the State's opposition to Application for writs, only a brief summary thereof will be made in this brief.

During the early morning hours of August 4, 1961, the Chief of Police and Assistant Chief of Police of Shreveport received at least three telephone calls notifying them of a possible disturbance that might take place at the local bus station between 5:00 and 6:00 A.M. One of the defendants (Dennis) acknowledged that he telephoned both the police and the news media to that effect and requested the Police Department to have "plenty of officers" on hand.

As the result of those phone calls, several police officers and several Deputy Sheriffs were stationed on the inside and outside of the bus station. Two of the Defendants (Dennis and Blake) drove the remaining four defendants in Bethune's automobile to the station and sped

away, stopping about one block away where they could watch the activities at the station. The other four defendants walked past the interstate waiting room and, even though a police officer pointed out to them that they had just walked past the interstate waiting room (which they claimed to be their destination), they nevertheless went into the intrastate waiting room.

Once they made their entrance and began to crowd and congregate therein, many people became agitated and excited and scattered about, some climbing upon seats and some climbing over seats.

Various police officers ordered many people to move on, including white and colored people, passengers and non-passengers, adults and teen-agers. All such persons who were ordered to move on did so **with the sole exception of these four defendants.** They were ordered at least three times (possibly four times) to move on and, upon their failure to do so after being warned twice that they would be arrested if they did not do so, they were then all arrested and put in jail. All six defendants were charged in one Bill of Information with Disturbing the Peace, in violation of Article 103.1 of the Louisiana Criminal Code.

Dennis and Blake were charged as principals because they were accessories before the fact, having taken part in previous plans and meetings concerning this proposed disturbance and having likewise brought the other four defendants to the bus station in Bethune's car.

After argument upon various motions and requests made before Judge O'Neal, which were overruled, the de-

fendants were tried before Judge Dixon on August 18th and August 21st. All were found guilty of violating Article 103.1 of the Louisiana Criminal Code.

After Motions for a New Trial and In Arrest of Judgment were submitted and overruled, the defendants then applied to the Louisiana Supreme Court for Supervisory Writs, the Trial Court having granted a stay order and having released the defendants on bond.

ARGUMENT

Some of the minor claims of error (concerning Trial Court rulings) now urged by the defendants are, in our opinion, substantially answered in the State's Opposition and will not be reargued in this brief.

The defendants have endeavored strenuously to claim that their constitutional rights have been invaded, whereas the State contends that this is merely a prosecution of a misdemeanor involving a "pure and simple" disturbance and breach of the peace statute. The dedendants likewise have tried desperately to contend that the enforcement of this statute is an effort by the State to further and maintain segregation of the races in Louisiana.

At the outset, we wish to point out to the Court that (as shown on the trial of this case and as set forth in the State's Opposition) at least two sets of facts and circumstances abundantly show that, both in the past and on this occasion, this statute has been administered and enforced impartially and indiscriminately against all persons attempting to violate it, both white and colored.

These two sets of facts and circumstances are as follows:

(1) On this very occasion at the bus station various police officers ordered many other persons in addition to the defendants to move on and all of them did so (except the defendants) and therefore they did not violate the statute and were not arrested.

This included people in the intrastate waiting room, people that erupted from the restaurant, and people on the east, west and south sides of the bus station (and therefore not in the intrastate waiting room). This also included white and colored persons, passengers and non-passengers, male and female, teen-agers and adults.

(2) Inasmuch as one of the preliminary defense motions indicated a contention that this statute in its administration was being enforced only against colored persons, the State in its case in chief on the trial adduced ample evidence showing that this statute has been used and enforced against white and colored people, including teen-agers and adults, at many other locations besides the bus station. Some of these other locations are in front of a certain down town variety store, in front of a down town bank, at the entrance of a down town Billiard Parlor, at various cafes in the city, at certain drive-in restaurants and even on the State Fair Grounds.

Therefore, we believe that, inasmuch as the statute has been enforced as a regular disturbance of the peace statute and not as a means of maintaining segregation, the only remaining issue is whether or not, for any reason,

the statute could possibly be deemed to be in conflict with the Fourteenth Amendment to the U. S. Constitution.

On this remaining issue, we wish to point out to the Court that in *State v. Goldfinch*, Number 45, 491 on the docket of the Supreme Court of Louisiana (not yet reported—decided June 29, 1961) the Louisiana Supreme Court examined this very statute (Article 103.1—Act 69 of 1960) because of a similar contention made in that case.

In the Goldfinch case, the defendants, in aid of an attack upon the statute there involved (contending that it was designed to apply to and to be enforced arbitrarily against the colored race), actually offered in evidence certain other statutes, including Act 69 of 1960. In the Goldfinch case, the Louisiana Supreme Court said in answer to that contention:

> "We have carefully reviewed the provisions of these bills referred to which were enacted into law and no where in this content or context do we find that any of them seek to discriminate against any class, group, or race of persons. We therefore find no merit in this contention and, accordingly, dismiss it as being unsupported."

In *Elmer Brown, et al v. State of Mississippi*, Number 3196-3200-Cr., U. S. District Court, Southern District of Mississippi, (not yet reported; see certified copy of opinion attached to State's Opposition), the statute involved was Section 2087.5, Mississippi Code 1942, which in subsection 1 (1) is **identical** to Article 103.1 of the Louisiana Criminal Code. In the Brown case, the Court said:

"Much inflamatory criticism is leveled at that statute but the statute is a perfectly natural and necessary exercise by the State of a well-known and well-recognized police power. Petitioners endeavor in argument with desperation to convert that statute into a heavily veiled segregation statute. It is likewise attempted by astute counsel to convert this case into a segregation case. Actually this case cannot be treated or regarded by anyone in search of the truth or in quest of justice as a case in anywise or to any extent involving either integration or segregation. * * * They were arrested and convicted in the Justice of the Peace Court for a willful breach and violation of this peace statute. * * * the State of Mississippi has several segregation statutes which clearly deal with that subject as a part of its local jurisprudence. But Section 2087.5, Mississippi Code 1942, is not such a statute. It is a pure and simple peace law enacted by the Legislature in good faith to assure peace and tranquility among its people. * * * They had no civil right to incite a riot or to provoke mob violence. The arresting officer promptly and efficiently and very properly discharged his duty in arresting each of these criminals under such circumstances.

"This record does not show that this statute destroys or abridges any civil right of either of these Petitioners. * * * This state statute applies alike to black and white citizens just as it was enforced in the case at bar without distinction as to race or color."

Therefore, Courts in both the States of Mississippi and Louisiana have held that this statute is not a segregation statute but simply a disturbance of the peace statute.

Likewise, the United States Supreme Court in *Feiner v. New York, 340 U.S. 315, 95 L. ed. 295, 71 S. Ct. 303*, has held that a similar New York statute was constitutional and did not encroach upon any constitutional rights under the Fourteenth Amendment or Bill of Rights of the U.S. Constitution. The New York statute involved in the *Feiner* case reads as follows:

> "Section 722. Any person who **with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned,** commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:
>
> "(3) **Congregates with others** on a public street **and refuses to move on when ordered by the police.**" (Emphasis supplied)

In the *Feiner* case, the U. S. Supreme Court said:

> " 'When clear and present danger of riot, disorder interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious.' 310 U. S. at 308."
>
> (Quoting from *Cantwell v. Connecticut, 310 U. S. 296)*
>
> * * * Nor in this case can we condemn the considered judgment of three New York courts ap-

proving the means which the police, faced with a crisis, used in the exercise of their power and duty to preserve peace and order. The findings of the state courts as to the existing situation and the imminence of greater disorder coupled with **petitioner's deliberate defiance of the police officers** convince us that we should not reverse this conviction in the name of free speech." (Parentheses and emphasis supplied)

An earlier New York case involving the **identical New York statute** is *People v. Galpern, 259 NY 279, 181 N.E. 572, 82 ALR 785.* In that case Galpern (an attorney) with several friends had been to a meeting and some of them desired to go to a restaurant. It was near midnight one summer evening and they were standing on the sidewalk talking. Other groups were standing nearby. A police officer ordered them to move on which Galpern refused to do, although the defendant did not use any threatening, abusive or insulting language or behavior. The Appellate Court assumed that the defendant in good faith believed the officer's directions to move on to be arbitrary and likewise that the defendant's failure to obey was not intended as a defiance of the authority of the officer. Nevertheless, the Court held:

"* * * but they must 'move on' when a police officer so directs for the purpose of avoiding possible disorder that otherwise might ensue. **The Legislature has provided that failure to obey such direction in itself is disorderly** conduct. * * * The Courts cannot weigh opposing considerations as to the wisdom of the police officer's directions when a

police officer is called upon to decide whether the time has come in which some directions are called for." (Emphasis supplied)

The language of the Court in *People v. Thorpe, 198 Misc. 462, 101 NY S (2d) 986, 990,* is appropriate to the case at bar, thus:

"Defendants' course, (of conduct) therefore, **was calculated to occasion a breach of the peace.**

People v. Hipple, 263 NY 242, 244, 188 N.E. 725, 726. "It is not pre-requisite to arrest on a charge of disorderly conduct (disturbing the Peace) that a breach of the peace shall have actually occurred. *People v. Feiner, 300 NY 391, 91 N.E. (2d) 316,* affirmed 71 S. Ct. 303. The defendants' conduct, at the very least, was such that it intended to disturb the public peace and quiet and to occasion a breach of the peace. That, under our cases, is sufficient.' *People v. Feiner, Supra, 300 NY 399, 91 N.E. (2d) 319.*

"* * * The police officer was, therefore, justified in arresting the defendants at their invitation. The evidence establishes their guilt. * * *" (Parentheses and emphasis supplied)

Other cases involving the statute in the Feiner case are:

People v. Hossock (1940) 6 Misc. (2d) 182, 23 NYS (2d) 520, cert. den. 312 US 659, 85 L Ed. 1107, 61 S. Ct. 733, in which the defendant's **conviction for** causing a crowd to collect on a public street while selling magazines, and **refusing to obey** a

policeman's order to move on, was affirmed against contention that the statute vested arbitrary and discriminatory power in the police.

People v. Friedman (1939) 6 Misc. (2d) 271, 14 NYS (2d) 389, in which a conviction was upheld over defendant's contention that the police acted arbitrarily in violation of his constitutional rights, where the defendant held a public meeting on a busy street and refused to obey a patrolman's order to move on, the court saying that a **failure, even though conscientious, to obey, may** interfere with the public order and **lead to a breach of the peace,** and in this case the **accused insisted on speaking after he was warned** to cease, **in violation of the statute.**

People v. Rozensweig, 12 NYS (2d) 795, and

People v. Rothenberg, 15 NYS (2d) 447, which held that failure to move on when ordered to do so, is a violation of the statute, even though there was no disorder otherwise than such refusal.

People v. Lo Vecchio 185 Misc. 197, 56 NYS (2d) 354, in which the Court said:

"**None of these decisions** should be construed as granting limitless and boundless freedom to any individual **to decide for himself whether or not he will obey any particular law.** If rights become thus inflated, they become privileges which, in their turn, destroy other rights of equal value.

"• • • **whenever any one person declares that he** or she **will be** the **sole judge** of whether or not the

law will be respected and obeyed, **anarchy has found its roots in a nation dedicated to lawful authority.**

"In the instant cases, due respect for law and lawful authority should have prompted defendants to obey the officer's directions which were not arbitrary or capricious * * *" (Emphasis added)

People v. Ward 159 Misc. 328, 287 NYS 432, afrmd 272 NY 615, 5 NE (2d) 359, in which the defendants were ordered by a police officer to disperse and move on and upon their refusal, they were arrested. The court held that even if, as they contended, defendants were merely attempting in good faith to test a police regulation, this did not matter if defendants' acts constituted disorderly conduct (under Sec. 722 of New York Penal Law).

Another regulation that is similar to the statute in the States of Louisiana, Mississippi, and New York, as discussed above, is found in *Benson v. City of Norfolk (Va.) 177 S.E. 222*, involving an ordinance passed by the City of Norfolk in 1907. The ordinance reads in part as follows:

"Any person or persons, * * * loitering or standing on any of the streets or ways of the city, shall, when required so to do by any member of the police force, move on, or any group of persons standing shall separate and move on, and cease to occupy such position on the street or way, under penalty of * * *."

The constitutionality of the ordinance was upheld and the court said:

> "It is, in our opinion, most salutary that the police officers of a municipality should have reasonable authority and discretion. Indeed, in exigencies, it is vital to the welfare of the community.
>
> "Courts should assume, initially, that they will exercise their discretion and authority in a fair and reasonable way.
>
> "See *State of Minnesota v. Sugarman, 126 Minn. 477, 148 N.W. 466, 52 L.R.A. (N.S.) 999; Commonwealth v. Challis, 8 Pa. Super, 130; City of Chariton v. Simmons, 87 Iowa 226, 54 N.W. 146; People of New York v. Galpern, 259 N.Y. 279, 181 N.E. 572, 83 A.L.R. 785.*
>
> "The above-cited cases deal somewhat with contentions similar to those urged by the plaintiff in error here. The conclusions are the other way."

SEE ALSO

Bennett v. Dalton (1943) 69 Ga. App. 438, 25 SE (2d) 726, app. dismd. 320 US 712, 88 L. Ed. 418, 64 S. Ct. 197, where it was shown that while defendants were passing out religious pamphlets, one of them was assaulted by a third person, causing a crowd to gather, which was later noticed by a policeman, who, unaware of the assault, saw the defendants, after the attacker had left, in the middle of a crowd talking in a loud manner, and after asking them to move on for the purpose of breaking up the crowd, arrested them upon their refusal to obey.

The court said that the **refusal to move on after being directed to do so by an officer of the law, constituted disorderly conduct.** (Statutes involved were city ordinances in general terms relating to disorderly conduct and acting in a disorderly manner.)

The most recent case in point is *Tinsley v. City of Richmond* (*Va.—April 24, 1961*) 119 SE (2d) 488, in which the violation was of a 1909 City ordinance reading as follows:

"Any person loitering or standing on the street, sidewalk or curb **shall move on** or separate **when required to do so by any member of the Police Bureau** and shall not thereafter occupy such position on the street, sidewalk or curb."

In citing *State v. Saggerman, Supra* and *City of Tacoma v. Roe 190 Wash.* 444, 68 P. (2d) 1028, the Court approved and quoted from *People v. Galpern Supra* and *Benson v. City of Norfolk supra*, and said:

"We re-adopt these views and hold them to be controlling in the case now before us." (referring to *Benson v. City of Norfolk.*)

"* * * **She deliberately placed herself in an emotion-packed situation, where at any moment trouble could have erupted,** causing danger to the defendant and to the others on the sidewalk. She was told THREE TIMES by a uniformed officer TO MOVE ON; **when she refused her offense was complete.**

"The police officer was under no obligation to stand and argue with the defendant. To have done so would have defeated the very purpose of the ordinance and the reason for keeping everyone moving—**the maintenance of order.**" (Parentheses and emphasis supplied)

Therefore, it is respectfully submitted that both the statute and Bill of Information are valid, there is no error in any of the Trial Court's rulings, and the application for Supervisory and Remedial Writs should be refused and denied.

Respectfully submitted,

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APPENDIX B.

STATE OF LOUISIANA

V

LEVERT H. TAYLOR, ET AL.

NO. 57,562
FIRST JUDICIAL
DISTRICT COURT
CADDO PARISH,
LOUISIANA

ON MOTION TO QUASH

The defendants in the above and entitled cause, being six in number, charged under R.S. 14:103.1 with disturbing the peace, filed a motion to quash the bill of information on five grounds, which motion was argued and submitted.

(1) It is alleged that the statute defining the offense under which the defendants are charged should be quashed for lack of clarity, as the statute lacks the clarity required by the Federal and State constitutions, in that there is no standard to apprise the defendants what is prohibited, particularly in reference to the words "crowd and congregates with others."

We see no merit to this contention. Two or more make a "crowd". We think that when the statute prohibits a person congregating with others, etc., the words used are of common import, and such person can clearly understand same. Furthermore, the charge filed herein charges six persons with having "congregated".

(2) The second point is without merit as the statute does not prohibit persons from "peaceable assembly."

The statute prohibits breaches of the peace as defined therein.

(3) The third ground of the motion to quash alleges that the defendants are denied the "equal protection" clause of the 14th Amendment to the Constitution of the United States, for the reason that labor unions are exempted under the statute.

Labor unions are regulated by a different law and, as we understand the jurisprudence, reasonable exceptions may be made in a statute without rendering the statute unconstitutional.

(4) Defendants allege that the statute under which defendants are charged violates the "due process" and "equal protection" clauses of the 14th Amendment to the Constitution of the United States, in that it has for its purpose furthering and maintaining the State's policy of forced segregation in the state of Louisiana at the places designated in the statutes; and in the alternative, that it is being administered in a fashion to deny members of the negro race rights accorded to them under the "equal protection" and "due process" clauses of the Constitution, by exacting of the (defendants) criminal penalties for seeking to use facilities not specifically designated for members of their race.

The statute applies to all persons, whether white or colored, and has no reference whatever to the segregation of the races. While the statute may be used to prosecute those who attempt to individually enforce desegregation or violate segregation statutes, it applies to white as well as

to colored people and (so far as we recall) the statute applies to places not covered by any segregation statute. It prohibits persons congregating with others with the intent to provoke a breach of the peace . . . in or upon . . a public street or public highway or upon a public sidewalk.

(5) The allegations contained in paragraph five are inapplicable to the present law, as the segregation statutes are not involved in this proceeding. The complaint in this section might be applicable to a statute providing for a segregation of the races if the defendants were charged with violating such law. The defendants are not charged with violating the segregation laws. They are charged with disturbing the peace. A person may have the legal right to go to his church or walk upon the streets, but he cannot do it if he breaches the peace in so doing.

Under the terms of the statute, if six white persons did the same thing that these six defendants were charged with having done, they would be subject to prosecution for the same offense.

For the reasons assigned the motion to quash is overruled.

Signed ROBT. J. O'NEAL
District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

ELMER BROWN — PETITIONER
VS. NO. 3196-Cr.
STATE OF MISSISSIPPI — RESPONDENT

JAMES CAREY — PETITIONER
VS. No. 3197-Cr.
STATE OF MISSISSIPPI — RESPONDENT

JUDITH FRIEZE — PETITIONER
VS. NO. 3198-Cr.
STATE OF MISSISSIPPI — RESPONDENT

ORVILLE LUSTER — PETITIONER
VS. NO. 3199-Cr.
STATE OF MISSISSIPPI — RESPONDENT

SHIRLEY SMITH — PETITIONER
VS. NO. 3200-Cr.
STATE OF MISSISSIPPI — RESPONDENT

OPINION

The Petitioners invoked 28 U.S.C.A. Section 1443 to remove these criminal prosecutions here from the County Court of Hinds County. The State of Mississippi moved to remand the cases for lack of jurisdiction in this Court. The propriety of the removal is determined from the case made by the record in the State Court. No testimony was adduced here by either party. The Petitioners were convicted in the Justice of the Peace Court on a vio-

lation of a State peace statute appearing as Section 2087.5, Mississippi Code 1942. Much inflammatory criticism is leveled at that statute but the statute is a perfectly natural and necessary exercise by the State of a well-known and well-recognized police power. Petitioners endeavor in argument with desperation to convert that statute into a heavily veiled segregation statute. It is likewise attempted by astute counsel to convert this case into a segregation case. Actually this case cannot be treated or regarded by anyone in search of the truth or in quest of justice as a case in anywise or to any extent involving either integration or segregation. Three of the five Petitioners here are white and were arrested in white facilities of some public agency in Jackson. They were arrested and convicted in the Justice of the Peace Court for a wilful breach and violation of this peace statute. As pointed out by Petitioners' counsel in the argument, the State of Mississippi has several segregation statutes which clearly deal with that subject as a part of its local jurisprudence. But Section 2087.5, Mississippi Code 1942, is not such a statute. It is a pure and simple peace law enacted by the Legislature in good faith to assure peace and tranquility among its people. These Petitioners heralded their arrival in Jackson from other states for provocative purposes. Their status as interstate passengers is extremely doubtful. Their destination was Jackson but their objective was trouble. They were arrested and tried according to the local court because of the provocative circumstances under which they appeared at the time in this particular place. They had no civil right to incite a riot or provoke mob violence. The arresting officer promptly and efficiently and very properly discharged his duty in arresting each of these criminals under such circumstances. This Court

may not be regarded as any haven for any such counterfeit citizens from other states deliberately seeking to cause trouble here among its people. Boynton v. Virginia, 364 U.S. 454, and Gomillion v. Lightfoot, 364 U.S. 339, and similar authorities are relied on by Petitioners. Those cases involved instances where citizens were actually divested of their civil rights. Surely the Court has the right to pierce the veil of any statute to determine whether or not it indirectly accomplished that which it could not directly do in such respect. In the Boynton case this bona fide interstate passenger was denied food in the white section of the interstate bus restaurant. In the Gomillion case negro citizens were divested of their right to vote and their right to enjoy the use of their property in the City of Tuskegee by a statute of Alabama which changed the shape and size of the municipality so as to exclude most of the negroes from the now twenty-eight sided municipality. The contrast in such cases with the case at bar does not require analysis or discussion.

This record does not show that this statute destroys or abridges any civil right of either of these Petitioners. Hull v. Jackson County Circuit Court, 6 C.C.A., 138 F. (2d) 820. This state statute applies alike to black and white citizens just as it was enforced in the case at bar without distinction as to race or color. It is not without significance that this federal civil rights statute has never been successfully invoked in a case of this kind cited to this Court. An independent research has not revealed any such case in this age of myriad litigation and it must be assumed that this statute was not designed or intended to serve any such purpose or some court would have said so within three quarters of a century. In Steele v.

Superior Court of California, 9 C.C.A., 164 F. (2d) 781, it was held that a criminal prosecution could not be removed under this statute for a violation of a civil right of the accused by a police officer in making an unlawful search and seizure in violation of his constitutional rights. The Court said that a petitioner in such a case must clearly show a violation of the equal protection clause of the Fourteenth Amendment. Such is the import of State of Texas v. Dorris, 165 F. Supp. 738, where the Petitioner sought a removal to the Federal Court under this Section 1443, Title 28 United States Code, on the ground that he could not possibly get a fair trial in the courts of Brooks County for a misdemeanor for which he was charged and the Court said:

> "Since the denial of equal rights which will justify a removal must be the result of the constitution or laws of the state, there is no right of removal where the alleged discrimination against defendant, in respect of his equal rights, is due to illegal or corrupt acts of administrative officers, unauthorized by the state constitution or laws * * * The removal provision under consideration does not contemplate a removal where neither the constitution nor laws of the state deny the litigant his civil rights, but where there is a criminal misuse or violation of the state law by some subordinate office which results in depriving the litigant of the rights which the state law accords to him. Alleged existence of race prejudice, interfering with a fair trial, is not ground for removal, where the prejudice cannot be attributed to the state constitution or laws. It is not cause for removal that jury commissioners or other subordinate officers have, without authority derived from the

> constitution or laws of the state, excluded colored citizens from juries because of their race, or excluded from the jury every person, however competent, who belonged to the same political party as the accused."

A careful examination of the authorities cited by able counsel on both sides leads this Court to the inescapable conclusion that it has no jurisdiction because these cases were improperly removed here. The motions to remand these cases are therefore sustained and a proper order may be taken therefor.

This August 26, A. D., 1961.

HARRY COX
UNITED STATES DISTRICT JUDGE.

A TRUE COPY, I HEREBY CERTIFY.
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IN THE

SUPREME COURT OF THE UNITED STATES

(Decided June 4, 1962)

No. 773

LEVERT H. TAYLOR, ET AL.,

versus

STATE OF LOUISIANA.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

PETITION FOR REHEARING ON BEHALF OF STATE OF LOUISIANA.

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GROUNDS FOR REHEARING.

This Court should have denied the application for the writ of certiorari in this matter, but having decided to grant such writ should have required this case to be set for argument and preparation of record before issuing any mandate herein.

In this matter, the State of Louisiana feels that the decision of this Honorable Court rendered on June 4, 1962 (without any oral argument or hearing or other advance notice and without any notice that a writ of certiorari had been granted) is contrary to law and contrary to the jurisprudence of this Honorable Court.

Primo, we respectfully submit that surely the errors made by this Court on questions of fact would not have been made if the respondent had been notified that a writ of certiorari had been granted and if respondent had been given an opportunity to designate portions of the testimony to be included in the record (which respondent could have cited and quoted from in a full formal brief on the merits once the writs had been granted, all in keeping with the purpose of the rules promulgated by this Court).

For example, the transcript of testimony has never been filed in **any** State Court in Louisiana and therefore respondent was not able to quote from and cite the page numbers of the testimony as transcribed, and **no official transcript** thereof has been furnished to the State of Louisiana. The transcript of testimony attached to petitioners' original petition for certiorari was obtained privately by petitioners and has never been available to respondent for citation and quotation.

Therefore, the member (or members) of this Honorable Court who examined or read any portion of that private unofficial transcript did not have the benefit of having their attention specifically called to the testimony of the Officers Meacham, Guthrie and Dent.

The testimony of those officers plainly shows: that an actual disturbance of the peace in reality took place; that every person who was ordered to move on and disperse, and who did so move on, obeyed the law (Art. 103.1) and were not arrested; and that petitioners were the only ones who refused to disperse and move on, thus violating Article 103.1 of the Louisiana Criminal Code. A careful examination of the testimony of those three officers would likewise show other pertinent factors which were never recognized or even touched on in this Court's opinion.

We respectfully submit that this Court is in error in holding that petitioners "were ordered to leave or be arrested" if by this statement, in the Court's opinion, this Court meant to infer that they were ordered to leave the premises. They were simply ordered to disperse and move on, and when they failed to do so they violated a disturbance of the peace statute.

This Court, we also respectfully submit, is in error in thinking that there even was (or is) a colored waiting room in existence at the Trailways Bus Depot in Shreveport, Louisiana. The testimony clearly showed that on the date of this offense there were two waiting rooms, one for interstate passengers and one for intrastate passengers, both of which were clearly marked.

Those waiting rooms were so designated in compliance with Louisiana law and the Louisiana statutes on that point had never been declared unconstitutional or void in any manner at the time of this offense. Whether such designation in compliance with Louisiana law was

or is unconstitutional, or void as being in conflict with any ruling of the Interstate Commerce Commission, was not an issue before the Court in this case, and this offense took place before the Interstate Commerce Commission ever attempted to promulgate any ruling in connection therewith.

That matter could and would be the subject of a separate civil lawsuit, but it was not and is not an issue in this criminal case of disturbing the peace for violating a "move on" statute.

This Court said in its opinion of June 4, 1962, "There was no evidence of violence. * * * petitioners were quiet, orderly, and polite."

That was never an issue in this case, and the State of Louisiana never contended in this prosecution that petitioners were not quiet and orderly, and, while it is true that the record "contains no evidence of violence" at the time and place these petitioners were arrested, it is also true that the record **will show** an "apprehension of, and potential for, violence."

Thus, the record **will show** that a tense situation existed at the Trailways Bus Depot on the day in question, with a substantial apprehension of, and a substantial potential for, violence within the meaning and intendment of the statute; and that order was maintained largely, if not entirely, by the very police action of which these petitioners now complain.

In this connection, we respectfully and strenuously submit that this Honorable Court failed to recognize the

real issue in this prosecution under Article 103.1. In all of the cases cited in the "response" which we filed at the request of this Court, **the Courts of last resort always found that the defendants were in a place where they had a right to be, but they failed to obey the police officers' order to disperse and move on and therefore** were guilty of violating a particular "move on" statute.

This is particularly true of *People v. Galpern*, 259 N. Y. 279, 181 N. E. 572, 83 A. L. R. 785. In that case, the defendant was merely standing on the sidewalk talking to some friends, in an orderly and inoffensive way, and he refused to move on when ordered to do so by the police officers. Other groups were standing nearby and were not ordered to move on. The defendant, Galpern, **did not use** any threatening, abusive or insulting language or behavior **or any violence.** The Court **assumed** that the defendant in good faith believed that the officer was arbitrary and also assumed that defendant's failure to obey was not intended as a defiance of the authority of the officer.

Yet, nevertheless, the Court of last resort held that **he had violated the New York "move on" statute** adopted in 1923, **which is almost word for word the same as Article 103.1** of the Louisiana Criminal Code, even though there was **not** such a crowd of people and such a potential for violence as **would be shown** by the record in the present case.

The same result is true of the facts in the following cases:

Feiner v. New York, 340 U. S. 315, 95 L. ed. 295, 71 S. Ct. 303;

People v. Thorpe, 198 Misc. 462, 101 N. Y. S. (2d) 986, 990;

People v. Feiner, 300 N. Y. 391, 91 N. E. (2d) 316;

People v. Hossock (1940), 6 Misc. (2d) 182, 23 N. Y. S. (2d) 520, cert. den. 312 U. S. 659, 85 L. ed. 1107, 61 S. Ct. 733;

People v. Friedman (1939), 6 Misc. (2d) 271, 14 N. Y. S. (2d) 389;

People v. Rosensweig, 12 N. Y. S. (2d) 795;

People v. Lo Vecchio, 185 Misc. 197, 56 N. Y. S. (2d) 354;

People v. Ward, 159 Misc. 328, 287 N. Y. S. 432, affmd. 272 N. Y. 615, 5 N. E. (2d) 359,

and many other cases cited on pages 33-39 of our original response.

In all of those cases there was no violence, and in each one the defendants were "quiet and orderly." Yet, it was specifically held that they failed to move on and therefore violated the particular "move on" statute involved.

Possibly some confusion might arise in the mind of some because this statute is called "disturbing the peace." It can very easily be called failure to "move on" because it is **not** necessary, as a prerequisite of a person being guilty of violating this statute, that such person himself actually and physically make or create a disturbance of

the peace. (In other words, **this is not a prosecution for disorderly conduct.**)

But, there was no confusion on the part of the United States Supreme Court in *Feiner v. New York*, *supra*, nor in *Tinsley v. City of Richmond*, 119 S. E. (2d) 488, being number 315 on the docket of this Honorable Court, October term, 1961, in which this Court said:

> "The Motion to Dismiss is granted and the appeal is dismissed for want of a substantial federal question."

The statute in *Tinsley v. Richmond* is much broader and allows the police officers to order even a single individual to move on whether any disturbance seems eminent or not. Indeed, the ordinance itself does not even set forth any standard or reason the officer must have for making such an order. The city ordinance in that case reads as follows:

> "Any person loitering or standing on the street, sidewalk or curb, shall move on or separate when required to do so by any member of the Police Bureau and shall cease to occupy such position on the street, sidewalk or curb."

We respectfully submit that the petitioners caused this Honorable Court to fall into the error of characterizing this prosecution as a segregation matter, which was **not** the basis of the prosecution by any stretch of the imagination insofar as the peace officers, the arresting officers and the prosecution officers are concerned.

(Therefore, we respectfully submit the six segregation-integration decisions cited in the June 4, 1962, *per curiam* in the next-to-last sentence have no relevancy in this prosecution for violation of the "move on" statute. This Louisiana "move on" statute, Art. 103.1, has absolutely nothing to do with segregation, either in its terminology or in its enforcement in this case. Many white people were ordered to move on, and they did move on. This statute applies to, and has been enforced as to, all persons similarly situated, regardless of racial, age, sex, color and all other distinctions.)

Petitioners were able to succeed in doing this by seizing upon a chance remark by the trial judge, which was completely *dictum* on his part. It was not a part of his ruling or a basis thereof, because he had already made his ruling denying the motion for a directed verdict before he uttered the *dictum*. We respectfully submit this Honorable Court has committed grave and serious error in holding that this *dictum* and passing remark "was sufficient evidence of guilt."

The actual ruling of the trial judge on the motion for a directed verdict was as follows:

> "The Motion for a Directed Verdict is overruled. I believe the State has shown a prima facie case."

That is far different from Your Honors' holding that the trial judge "held that the mere presence of the

negroes in the waiting room * * * was sufficient evidence of guilt." The trial Court simply did not say that there "was sufficient evidence of guilt."

This *dictum* remark was not made at all during the time the trial judge rendered his oral opinion finding the petitioners guilty at the conclusion of the entire trial, when he mentioned **some** of the "evidence of guilt" deemed sufficient to him, **after hearing the defense evidence.**

In conclusion, we submit that the following errors have been committed by this Honorable Court:

(1) In granting a writ of certiorari without respondent being given an opportunity to have a complete record made up (including an official transcript of testimony which could be cited and quoted) and then rendering a definitive decree reversing the judgments of the Louisiana Supreme Court and the First Judicial District Court of Louisiana, and without respondent being given the opportunity of filing a full formal brief on the merits and of presenting oral argument, all of which constituted an unanticipated and unprecedented deviation from the tenor and purpose of the rules of this Court as promulgated;

(2) In holding that there was such a room as a "colored waiting room" at the Trailways Bus Depot in Shreveport, Louisiana;

(3) In holding that the petitioners were "ordered to leave," if by that language this Court means

that they were ordered to leave the premises of the bus station;

(4) In indicating in its opinion that the real issue in this case was whether or not the petitioners were "violent" or "quiet, orderly and polite," that being a matter which was never before the Court (**and not even contemplated by the statute**);

(5) In holding that the *dictum* and passing remark of the trial judge was the **basis** of being "sufficient evidence of guilt" when such *dictum* remark was made, **not in finding them guilty, but** on the contrary, **after the trial Court had already overruled the motion for a directed verdict** and before the defense began its case;

(6) In holding that "the only evidence to support the charge" of violating Article 103.1 of the Louisiana Criminal Code was "that petitioners were violating a custom" relative to segregation when, as a matter of fact, **neither segregation nor integration was ever a basis of this prosecution**; and

(7) In indicating by the whole tenor of the *per curiam* opinion that for a person to be guilty of violating a "move on" statute he must himself have committed some violence or disorder, all of which is contrary to the jurisprudence of this Honorable Court, particularly as enunciated in *Feiner v. New York*, *supra*, and in *Tinsley v. City of Richmond*, Number 315, October term, 1961.

CONCLUSION.

We, therefore, respectfully submit rehearing should be granted herein and after argument thereon the judgment of the Louisiana Supreme Court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

I, M. E. Culligan, Assistant Attorney General of the State of Louisiana, a member of the Bar of the Supreme Court of the United States, hereby certify that a copy of this petition for rehearing has been deposited in the United States mail, postage prepaid, addressed to the

attorneys for the petitioners, namely, Jesse N. Stone, Jr., Esquire, Attorney at Law, Shreveport, La., and Carl Rachlin and Judith P. Vladeck, 280 Broadway, New York 7, New York.

M. E. CULLIGAN,
Assistant Attorney General, Member of the Bar of the Supreme Court of the United States.

CERTIFICATE OF COUNSEL.

I, M. E. Culligan, counsel for the above-named petitioner, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 58, subdivision one and two, of the Rules of this Court.

Counsel for Petitioner.